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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Communications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213

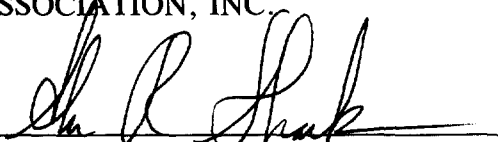
To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

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In response to the Notice of Proposed Rule Making adopted by the Federal Communications Commission ("FCC" or "Commission") on October 2, 1997^{1/} and pursuant to Rule Section 1.415 of the Commission's rules,^{2/} the American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") respectfully submits these comments with respect to the FCC's implementation of the Communications Assistance for Law Enforcement Act ("CALEA").^{3/} AMTA supports the Commission's statutory interpretation that the Telecommunications Act of 1996^{4/} did not modify the definition of "telecommunications carrier" for purposes of compliance with CALEA, as well as its exclusion of Private Mobile Radio Systems ("PMRS") from the obligations of CALEA. In addition, AMTA recommends that the Commission find that not all Commercial Mobile Radio Service ("CMRS") providers may reasonably fulfill their obligations under CALEA. In support thereof, AMTA submits the following:

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") Service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450 MHz bands. These members provide commercial wireless services throughout the country. Those

^{1/} Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC 97-356, 12 FCC Rcd ____ (rel. Oct. 10, 1997).

^{2/} 47 C.F.R. § 1.415.

^{3/} Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994)(codified as amended in sections of 18. U.S.C. and 47 U.S.C.)

^{4/} The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)("1996 Act").

that offer any interconnection capability on their systems are classified as CMRS, rather than PMRS. Pursuant to the NPR, it appears that a number of AMTA's members will be subject to new obligations under CALEA. Accordingly, AMTA has a significant interest in the referenced proceeding.

II. DISCUSSION

2. As the Commission explained in the NPR, CALEA was enacted in October, 1994 to enable law enforcement agencies to expand electronic surveillance activities to new wireless technologies. Among the various amendments to Title 18 of the United States Code and the Communications Act of 1934 which were enacted as part of CALEA is a provision mandating the Commission to prescribe such rules as are necessary to implement the legislation.^{5/} The instant NPR invites comment on the rules the Commission should adopt to realize that directive.

A. The Commission Properly Proposes to Exclude PMRS Systems from CALEA Obligations.

3. Section 102(8) of CALEA defines a "telecommunications carrier" to include "a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire."^{6/} Under Section 102(8), "telecommunications carrier" also includes "a person or entity engaged in providing commercial mobile service".^{7/} The 1996 Act provides a different definition of "telecommunications carrier": "any provider of telecommunications services, except that such term does not include aggregators of

^{5/} 47 U.S.C. § 229.

^{6/} 47 U.S.C. § 1001(8).

^{7/} 47 U.S.C. § 1001(8)(B)(i).

telecommunications services."^{8/} "Telecommunications service" is defined under the 1996 Act as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."^{9/}

4. Although the 1996 Act would appear to govern the earlier-enacted CALEA legislation, the Commission correctly focuses on Section 601(c)(1) of the 1996 Act which clearly specifies that the 1996 Act does not modify, impair or supersede Federal law unless expressly provided in the Act.^{10/} Since nothing in the 1996 Act specifically modified CALEA, the FCC concluded that the 1996 Act definition of "telecommunications carrier" did not apply to CALEA.^{11/} In addition, the Commission proposed to exercise its discretion to exclude specific classes or categories of carriers from the obligations of CALEA by exempting private mobile service ("PMRS") providers.^{12/} The NPR seeks comment on these tentative conclusions.

5. AMTA fully supports the Commission's statutory interpretation and its decision to exclude PMRS providers from the obligations of CALEA. As the Commission notes, pursuant to Section 332 of the Communications Act, PMRS providers cannot be treated as common carriers for any purpose under the Communications Act. Because PMRS operators, by definition, do not provide interconnected service, they are not connected with and do not have

^{8/} 47 U.S.C. § 153(44).

^{9/} 47 U.S.C. § 153(46).

^{10/} NPR at ¶ 15 citing 1996 Act. § 601(c).

^{11/} NPR at ¶ 15.

^{12/} Id. at 19. Among the other services providers the FCC proposes to exclude are providers of exclusively information services, such as electronic mail providers and on-line services providers. Id. at ¶ 20.

access to the public switched network ("PSN"), the traditional focus of law enforcement agencies' surveillance activities.

B. The Commission Should Find that Not All CMRS Providers May Reasonably Achieve Their Obligations Under CALEA.

6. As discussed, the Commission proposes to include all CMRS providers among those required to comply with CALEA requirements, whatever technical standards ultimately are adopted. Accordingly, fully interconnected consumer-oriented, mass-marketed systems like cellular, personal communications systems ("PCS") and those SMRs which provide real-time, two-way interconnected voice service via networks which utilize intelligent switching capability and offer seamless handoff to customers are encompassed within the definition. However, it also includes business-oriented, niche-market system providers with limited interconnect capability formerly classified as PMRS such as Industrial/Business Radio Services licensees who offer for-profit interconnected service,^{13/} local interconnected SMR providers,^{14/} and for-profit commercial interconnected 220 MHz service licensees.^{15/}

7. AMTA contends that these subcategories of CMRS carriers are not capable of compliance with CALEA. As AMTA explained in its FBI Comments,^{16/} the system designs of 220 MHz, 450-512 MHz, and most 800 MHz and 900 MHz SMR systems do not lend themselves to the sort of narrowly-targeted interception required by law enforcement agencies.

^{13/} See, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 ¶ 87 (1994) ("CMRS Second Report and Order").

^{14/} See, Id. at ¶ 90.

^{15/} Id. at ¶ 95.

^{16/} See, Comments, American Mobile Telecommunications Association, Inc. (filed Jan. 16, 1996).

For example, traditional local SMR systems are comprised of multiple transmitters, each operating on a different channel, which are trunked together to provide greater capacity. The transmissions of a trunked system are automatically directed to the next available channel. These channel assignments are random, based on the level of service available on the system.

8. AMTA knows of no commonly-used SMR equipment that can reserve system capacity in the manner described by the FBI. Using the average system's technology, mobile units are assigned to whatever channel is free, and there is no way to separate a fraction of that airtime. While some equipment can be configured to reserve a channel in queue for a designated level or group of users, depending upon the percentage of system capacity that is being used, a single channel so reserved would represent 20% of the average five-channel local SMR system.^{17/}

9. AMTA is unaware of any basis for determining that such systems will be technologically capable of CALEA compliance. AMTA again submits that the most efficient way to conduct surveillance of the communications of a targeted individual over a minimally interconnected system is through interception of the telephone number at the local exchange carrier ("LEC") switch. Alternatively, an efficient and non-intrusive technique for surveillance would be possible through providing law enforcement with a mobile unit programmed to a particular interconnected user's service code. Agency personnel would thus be able to monitor that specific subscriber's communications. AMTA has been advised that use of such a "cloned" handset would be undetectable by the surveillance target.

^{17/} Source: Uniden America Corporation. The equipment referred to is Uniden's ESAS networking system.

10. Support of this approach is found in the factors to be considered by the Commission in determining whether compliance with the assistance capability requirements is "reasonably achievable."^{18/} Among the elements specifically on point are: the effect of compliance on the nature and cost of the equipment, facility, or service at issue; the effect of compliance on the operation of the equipment, facility, or service at issue; the policy of the United States to encourage the provision of new technologies and services to the public; and, the financial resources of the telecommunications carrier.^{19/}

11. If the FCC agrees that it is in the public interest to distinguish between personal communications carriers fully capable of implementing the requirements of CALEA and business-oriented providers of systems with limited capacity and even more limited interconnection capability, that could comply with CALEA only with great difficulty, it would be appropriate to use an analysis comparable to the one recently adopted in the FCC's E911 proceeding.^{20/} The Commission recently revised its E911 rules to clarify that "covered SMRs", i.e. those SMRs subject to E911 obligations, include only those operators that provide real-time,

^{18/} 47 U.S.C. § 1008(b)(1). Under Section 109 of CALEA, telecommunications carriers or any other interested person may petition the Commission to determine whether requiring equipment, facilities, or services deployed after January 1, 1995 to comply with CALEA's Section 103 capability requirements is "reasonably achievable".

^{19/} NPR at ¶45.

^{20/} Memorandum Opinion and Order, CC Docket No. 94-102, FCC 97-402 (adopted. Dec. 1, 1997). Similarly, in other proceedings the Commission has recognized that not all interconnected CMRS systems should be subject to the same regulatory obligations. See, e.g., Report and Order, CC Docket No. 94-102, 11 FCC Rcd ____ (rel. July 26, 1996) ("E911 Order"); First Report and Order, CC Docket No. 94-54, 11 FCC Rcd ____ (rel. July 12, 1996) ("Resale Order"); First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 11 FCC Rcd ____ (rel. July 2, 1996) ("Number Portability Order") and Report and Order, ET Docket No. 93-62, 11 FCC Rcd ____ (rel. Aug. 1, 1996) ("RF Order").

two-way interconnected voice service the networks of which utilize intelligent switching capability and offer seamless handoff to customers.^{21/} SMR operators providing traditional, local SMR service, typically with limited interconnection capability, were determined not to be engaged in the type of offering that warrants imposition of E911 obligations.

12. AMTA suggests that the Commission's findings articulated in the E911 Order apply equally well to CALEA:

While some traditional SMRs are treated as CMRS because they are interconnected to the public switched network, we do not intend to require them to implement E911. We find that costs of implementing E911 for local SMRs would outweigh the benefits and, as AMTA argues, imposing this obligation on them may give them the incentive to eliminate their interconnection, which would not be in the public interest.^{22/}

As with E911, the costs of implementing the obligations of CALEA for local wireless carriers would outweigh the benefits to law enforcement. In fact, contrary to the public interest, those costs are more likely to induce operations to eliminate their interconnection, therefore, restricting the choice of services available to the public.

13. Moreover, AMTA submits that such an approach should be adopted in the interest of administrative efficiency. If the Commission does not recognize that not all CMRS providers can "reasonably achieve" compliance with CALEA, it will be faced with a multiplicity of petitions from carriers seeking a determination that compliance is not "reasonably achievable." Incorporating technical changes to analog systems on the level of those discussed for large-scale,

^{21/} Order, CC Docket No. 94-102, DA 97-2530, 12 FCC Rcd ____ ¶ 6 (rel. Dec. 1, 1997) citing Memorandum Opinion and Order, CC Docket No. 94-102, FCC 97-402 (adopted. Dec. 1, 1997). The Commission also extended this definition to broadband personal communications service and cellular service as well as SMR service. Id.

^{22/} E911 Order at ¶ 81.

mass-market wireless telephony services would further require major redesign of the technology now in use. This could hardly be in keeping with Congressional intent in enacting CALEA.

B. Extension of Compliance Date

14. The NPR seeks comment on the process by which the Commission will grant carriers' petitions for an extension of time to comply with CALEA.^{23/} AMTA submits that the Commission will be inundated with such petitions. Accordingly, the FCC should consider granting a blanket two-year extension to all covered telecommunications carriers.

III. CONCLUSION

15. For the reasons described herein, AMTA urges the Commission to move forward in this proceeding consistent with the recommendations detailed herein.

^{23/} NPR at ¶¶ 49-50.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this December 12, 1997, caused to be hand carried a copy of the foregoing Comments to the following:

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